

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CILP ASSOCIATES, L.P. and COHEN POOLED
ASSETS, L.P.,

Case No. 03 CV 2632 (RB)

Plaintiffs,

-against-

LIPPER CONVERTIBLES, L.P., LIPPER HOLDINGS,
LLC, LIPPER & COMPANY, L.P. KENNETH LIPPER,
ABRAHAM BIDERMAN, and
PRICEWATERHOUSECOOPERS LLP.

Defendants.

ANDREW E. LEWIN, individually and as Trustee of the
Regina Gruss Trust f/b/o Andrew Lewin, CLEMENT
LEWIN, as Trustee of the Regina Gruss Trust f/b/o
Andrew Lewin, and MARINA LEWIN, in their
individual capacity and derivatively on behalf of Lipper
Convertibles, L.P.,

Case No. 03 CV 1117 (RB)

Plaintiffs,

-against-

LIPPER CONVERTIBLES, L.P., LIPPER HOLDINGS,
LLC, LIPPER & COMPANY, L.P. KENNETH LIPPER,
ABRAHAM BIDERMAN, and
PRICEWATERHOUSECOOPERS LLP.

Defendants.

**DECLARATION OF JOSHUA M. CUTLER
IN SUPPORT OF PRICEWATERHOUSECOOPERS LLP'S
MOTION FOR SUMMARY JUDGMENT**

Joshua M. Cutler, declares:

I am a member of the bar of the State of New York, am not a party to the above case, am over eighteen years old, and am associated with the law firm Orrick, Herrington

& Sutcliffe LLP, attorneys for defendant PricewaterhouseCoopers LLP in this action. I am admitted to practice in this Court. I submit this declaration in support of PricewaterhouseCoopers LLP's ("PwC") Motion for Summary Judgment in CILP Associates, L.P. v. Lipper, Case No. 03 CV 2632 (S.D.N.Y.) and Lewin v. Lipper, Case No. 03 CV 1117 (S.D.N.Y.) (together, the "Actions").

1. Attached hereto as Exhibit 1 is a true and correct copy of the Amended and Restated Partnership Agreement of Lipper Convertibles, L.P. (formerly Lipco Partners, L.P.) dated as of July 1, 1993, with amendments dated through January 1, 2003.

2. Attached hereto as Exhibit 2 is a true and correct copy of the Lipper Convertibles, L.P. Private Offering Memorandum dated December 31, 1997.

3. Attached hereto as Exhibit 3 is a true and correct copy of the Lipper Convertibles, L.P. Private Offering Memorandum dated July 1, 2000.

4. Attached hereto as Exhibit 4 is a true and correct copy of the Amended Complaint in CILP Associates, L.P., v. Lipper Convertibles, L.P., Case No. 03 CV 2632 (S.D.N.Y.).

5. Attached hereto as Exhibit 5 is a true and correct copy of the Complaint in Lewin v. Lipper Convertibles, L.P., Case No. 03 CV 1117 (S.D.N.Y.).

6. Attached hereto as Exhibit 6 is a true and correct copy of the Lipper Convertibles, L.P. financial statements for the year ended December 31, 1996.

7. Attached hereto as Exhibit 7 is a true and correct copy of the Lipper Convertibles, L.P. financial statements for the year ended December 31, 1997.

8. Attached hereto as Exhibit 8 is a true and correct copy of the Lipper Convertibles, L.P. financial statements for the year ended December 31, 1998

9. Attached hereto as Exhibit 9 is a true and correct copy of the Lipper Convertibles, L.P. financial statements for the year ended December 31, 1999.
10. Attached hereto as Exhibit 10 is a true and correct copy of the Lipper Convertibles, L.P. financial statements for the year ended December 31, 2000.
11. Attached hereto as Exhibit 11 is a true and correct copy of the engagement letter for PwC's audit of Lipper Convertibles' financial statements for the year ended December 31, 2000.
12. Attached hereto as Exhibit 12 is a true and correct copy of the Expert Report of David P. Stowell dated September 1, 2006.
13. Attached hereto as Exhibit 13 is a true and correct copy of the Rebuttal Expert Report of John E. Barron, CPA dated October 20, 2006.
14. Attached hereto as Exhibit 14 is a true and correct copy of the transcript of the deposition of John E. Barron, CPA dated December 13, 2006.
15. Attached hereto as Exhibit 15 is a true and correct copy of the Expert Report of Gary Watson dated September 1, 2006.
16. Attached hereto as Exhibit 16 is a true and correct copy of the Expert Report of John E. Barron, CPA dated August 29, 2006.
17. Attached hereto as Exhibit 17 is a true and correct copy of the transcript of the deposition of Cindy Ponikvar dated April 27, 2006.
18. Attached hereto as Exhibit 18 is a true and correct copy of a management representation letter dated February 27, 1996.
19. Attached hereto as Exhibit 19 is a true and correct copy of a management representation letter dated February 27, 1997.

20. Attached hereto as Exhibit 20 is a true and correct copy of a management representation letter dated February 26, 1998.

21. Attached hereto as Exhibit 21 is a true and correct copy of a management representation letter dated February 25, 2000.

22. Attached hereto as Exhibit 22 is a true and correct copy of a management representation letter dated February 26, 2001.

23. Attached hereto as Exhibit 23 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 1996.

24. Attached hereto as Exhibit 24 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 1996.

25. Attached hereto as Exhibit 25 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 1996.

26. Attached hereto as Exhibit 26 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 1997.

27. Attached hereto as Exhibit 27 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 1997.

28. Attached hereto as Exhibit 28 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 1998.

29. Attached hereto as Exhibit 29 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 1998.

30. Attached hereto as Exhibit 30 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 1999.

31. Attached hereto as Exhibit 31 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 1999.

32. Attached hereto as Exhibit 32 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 2000.

33. Attached hereto as Exhibit 33 is a true and correct copy of an excerpt of audit working papers in respect of the audit of Lipper Convertibles for the year ended December 31, 2000.

34. Attached hereto as Exhibit 34 is a true and correct copy of the American Institute of Certified Public Accountants' codification of U.S. Auditing Standards § 342.

35. Attached hereto as Exhibit 35 is a true and correct copy of the Expert Rebuttal Report of Gary Watson dated October 20, 2006.

36. Attached hereto as Exhibit 36 is a true and correct copy of the Lipper Convertibles Series II, L.P. Private Offering Memorandum dated July 1, 1999.

37. Attached hereto as Exhibit 37 is a true and correct copy of a placement memorandum for Lipper Offshore Convertibles, L.P. dated January 1, 2002.

38. Attached hereto as Exhibit 38 is a true and correct copy of an Amended Exit Conference Summary Form dated December 30, 1998.

39. Attached hereto as Exhibit 39 is a true and correct copy of an NASD Regulation Examination Report for Lipper Offshore Convertibles, L.P., exam number E07000162.

40. Attached hereto as Exhibit 40 is a true and correct copy of a letter from NASD Regulation to Abraham Biderman dated October 16, 1998.

41. Attached hereto as Exhibit 41 is a true and correct copy of an Exit Conference Summary Form dated December 18, 1998.

42. Attached hereto as Exhibit 42 is a true and correct copy of a letter from NASD Regulation to Steven Finkel dated August 7, 2000.

43. Attached hereto as Exhibit 43 is a true and correct copy of a facsimile from Lipper & Co., L.P. to NASD Regulation dated August 17, 2000.

44. Attached hereto as Exhibit 44 is a true and correct copy of a letter from NASD Regulation to Edward Strafaci dated October 4, 2000.

45. Attached hereto as Exhibit 45 is a true and correct copy of the transcript of the deposition of Andrew Lewin dated February 9, 2007.

46. Attached hereto as Exhibit 46 is a true and correct copy of the transcript of the deposition of Marina Lewin dated February 9, 2007.

47. Attached hereto as Exhibit 47 is a true and correct copy of the transcript of the deposition of Eli Garber dated May 17, 2006.

48. Attached hereto as Exhibit 48 is a true and correct copy of the transcript of the deposition of David Zahner dated May 17, 2006.

49. Attached hereto as Exhibit 49 is a true and correct copy of PwC's First Set of Interrogatories to Plaintiffs.

50. Attached hereto as Exhibit 50 is a true and correct copy of a Subscription Agreement on behalf of Cohen Pooled Assets, L.P. to Lipper Convertibles, L.P.

51. Attached hereto as Exhibit 51 is a true and correct copy of a Subscription Agreement on behalf of CILP Associates, L.P. to Lipper Convertibles Series II, L.P.

52. Attached hereto as Exhibit 52 is a true and correct copy of a Subscription Agreement on behalf of Andrew and Marina Lewin to Lipper Convertibles Series II, L.P.

53. Attached hereto as Exhibit 53 is a true and correct copy of a Subscription Agreement on behalf of Andrew Lewin to Lipper Convertibles Series II, L.P.

54. Attached hereto as Exhibit 54 is a true and correct copy of a Subscription Agreement on behalf of the Regina Gruss Trust F/B/O Andrew Lewin to Lipper Convertibles Series II, L.P.

55. Attached hereto as Exhibit 55 is a true and correct copy of the Lewin Plaintiffs' Response to Defendant PwC's First Set of Interrogatories.

56. Attached hereto as Exhibit 56 is a true and correct copy of the CILP Plaintiffs' Amended Responses to Defendant PwC's Fist Set of Interrogatories.

57. Attached hereto as Exhibit 57 is a true and correct copy of a letter and transfer agreement sent to CILP Associates, L.P. on November 21, 2000.

58. Attached hereto as Exhibit 58 is a true and correct copy of a letter to the limited partners of Lipper Convertibles dated February 20, 2002.

59. Attached hereto as Exhibit 59 is a true and correct copy of a letter to the limited partners of Lipper Convertibles dated March 26, 2002.

60. Attached hereto as Exhibit 60 is a true and correct copy of the Verified Petition filed in In re Lipper Holdings LLC, Index No. 603653/2002 (N.Y. Sup. Ct.).

61. Attached hereto as Exhibit 61 is a true and correct copy of a Report of BDO Seidman LLP dated October 3, 2002.

62. Attached hereto as Exhibit 62 is a true and correct copy of a decision and opinion filed on April 11, 2003 in In re Lipper Holdings LLC, Index No. 603653/2002 (N.Y. Sup. Ct.).

63. Attached hereto as Exhibit 63 is a true and correct copy of an Affidavit in Response to Verified Petition filed by Eric B. Levine in In re Lipper Holdings LLC, Index No. 603653/2002 (N.Y. Sup. Ct.).

64. Attached hereto as Exhibit 64 is a true and correct copy of the redacted Consolidated Reply of Certain Limited Partners Supporting the BDO Proposed Plan of Distribution filed in In re Lipper Holdings LLC, Index No. 603653/2002 (N.Y. Sup. Ct.).

65. Attached hereto as Exhibit 65 is a true and correct copy of an order filed in In re Lipper Holdings LLC, Index No. 603653/2002 (N.Y. Sup. Ct.) on July 7, 2003.

66. Attached hereto as Exhibit 66 is a true and correct copy of the Report of Richard A. Williamson filed in In re Lipper Holdings LLC, Index No. 603653/2002 (N.Y. Sup. Ct.) dated December 15, 2003.

67. Attached hereto as Exhibit 67 is a true and correct copy of the Report of BDO Seidman LLP dated December 15, 2003.

68. Attached hereto as Exhibit 68 is a true and correct copy of the Affidavit in Response to Reports Dated December 15, 2003 of Richard A. Williamson, Successor Liquidating Trustee, and BDO Seidman filed by Eric B. Levine in In re Lipper Holdings LLC, Index No. 603653/2002 (N.Y. Sup. Ct.).

69. Attached hereto as Exhibit 69 is a true and correct copy of an order in In re Lipper Holdings LLC, Index No. 603653/2002 (N.Y. Sup. Ct.) filed February 13, 2004.

70. Attached hereto as Exhibit 70 is a true and correct copy of the complaint filed in Williamson v. PricewaterhouseCoopers LLP, Index No. 602106/2004 (N.Y. Sup. Ct.).

71. Attached hereto as Exhibit 71 is a true and correct copy of the Limited Partners' Derivative Complaint filed in Levy v. Lipper Holdings LLC, Index No. 600939/2003 (N.Y. Sup. Ct.).

72. Attached hereto as Exhibit 72 is a true and correct copy of the Limited Partners' Derivative Complaint filed in Roberts v. Lipper Holdings LLC, Index No. 600797/2003 (N.Y. Sup. Ct.).

73. Attached hereto as Exhibit 73 is a true and correct copy of a stipulation and order filed in Levy v. Lipper Holdings LLC, Index No. 600939/2003 (N.Y. Sup. Ct.), and Roberts v. Lipper Holdings LLC, Index No. 600797/2003 (N.Y. Sup. Ct.).

74. Attached hereto as Exhibit 74 is a true and correct copy of a Stipulation and Agreement of Compromise and Settlement filed in Williamson v. PricewaterhouseCoopers LLP, Index No. 602106/2004 (N.Y. Sup. Ct.).

75. Attached hereto as Exhibit 75 is a true and correct copy of a transcript of hearings in In re Lipper Holdings LLC, Index No. 603653/2002 (N.Y. Sup. Ct.) held on January 5, 2010.

76. Attached hereto as Exhibit 76 is a true and correct copy of a transcript of hearings in Serino v. Lipper, Index No. 604396/2002 (N.Y. Sup. Ct.) held on February 2, 2010.

77. Attached hereto as Exhibit 77 is a true and correct copy of a Notice of Settlement and Proposed Order filed in Serino v. Lipper, Index No. 604396/2002 (N.Y. Sup. Ct.) held on February 5, 2010.

78. Attached hereto as Exhibit 78 is a true and correct copy of a Memorandum and Order filed in Lewin v. Lipper Convertibles, L.P., Case No. 03 CV 1117 (S.D.N.Y) dated May 12, 2004.

79. Attached hereto as Exhibit 79 is a true and correct copy of a Memorandum and Order filed in CILP Associates, L.P., v. Lipper Convertibles, L.P., Case No. 03 CV 2632 (S.D.N.Y.) dated May 12, 2004.

80. Attached hereto as Exhibit 80 is a true and correct copy of the Answer and Cross-Claims filed in Lewin v. Lipper Convertibles, L.P., Case No. 03 CV 1117 (S.D.N.Y) dated July 16, 2004.

81. Attached hereto as Exhibit 80 is a true and correct copy of the Answer and Cross-Claims (Corrected) filed in CILP Associates, L.P., v. Lipper Convertibles, L.P., Case No. 03 CV 2632 (S.D.N.Y.) dated July 16, 2004.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, D.C.
May 28, 2010

/s/ Joshua M. Cutler

Joshua M. Cutler

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